

State of New Hampshire Public Utilities Commission



Value of Distributed Energy Resources Study Consultant

**REQUEST FOR PROPOSALS (RFP)
RFP #2020-001**

**Release Date: March 27, 2020
Application Due: 4:30 p.m. EST May 15, 2020**

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Executive Summary

The New Hampshire Public Utilities Commission (Commission) issues this Request for Proposals (RFP) from qualified consultants to perform a study to assess the relative benefits and costs of net-metered distributed energy resources (DER) from the perspectives of the utility system, customer-generators participating in net energy metering, and other electric utility ratepayers. The study will consider the net value from load reduction due to net-metered distributed generation within New Hampshire's three regulated electric distribution utility service territories. The results of the study, which will assess the value of distributed energy resources (VDER), are intended to inform future net energy metering tariff development proceedings before the Commission.

Electronic proposals must be received at the Public Utilities Commission no later than 4:30 p.m. EST on May 15, 2020. If the Commission decides to award a contract as a result of this RFP process, any award is contingent upon approval of the contract by the Governor and Executive Council of the State of New Hampshire, with payment subject to the Commission's special utility assessment process. *See RSA 365:37, II.*

Pertinent Dates and Information

1. Inquiries about this RFP may be submitted by email to PUC-RFP@NH.gov no later than 4:30 p.m. EST on April 17, 2020. The subject of the email should state the following: RFP #2020-001, Value of Distributed Energy Resources Study Consultant. **No phone calls please.** It is highly recommended that respondents review the RFP as soon as possible and submit any questions promptly to allow the Commission Staff (Staff) time to answer questions and to allow the proposer time to complete the proposal. Inquiries will be posted as received. Please note that responses to questions are carefully considered and responses may require several days. Responses will be posted as available, at: www.puc.nh.gov/Home/requestforproposal.htm. From the date of the release of this RFP until awards are made, all communications with personnel employed by or under contract with the Commission regarding this RFP are prohibited, unless first approved by the point of contact identified in item #3 on page 2, in advance, and in writing.
2. Electronic proposals **must be received** at the Commission by no later than 4:30 p.m. EST on May 15, 2020. Proposals must be typed and double-sided. The strongly preferred format includes 12 point font size with 1-inch page margins. Page numbers should be included. Electronic copy must be in PDF (portable document file) format and must be searchable. Proposals must be submitted electronically to: PUC-RFP@NH.gov. The file

will be considered received based on the timestamp in the receiver's email. The Commission can accept electronic files no larger than 8 MB. Staff shall assess completeness and responsiveness of the proposal to eliminate nonconforming proposals. Staff may waive or offer a limited opportunity to cure immaterial deviations from RFP requirements if it is determined to be in the best interests of the State. Any response that is filed shall be valid for not fewer than 180 days following the deadline for submission of proposals, or until the effective date of any resulting contract, whichever is later.

3. Paper copies are also required. In addition to the electronic submission sent to PUC-RFP@NH.gov, proposers must submit six (6) paper copies to the RFP point of contact:

Juli Pelletier,
Business Office Director
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

The paper copies shall be sent by first class U.S. mail and postmarked no later than May 15, 2020, or sent by 1-day overnight express delivery service (UPS, Federal Express, etc.), no later than May 15, 2020, or hand-delivered no later than May 15, 2020. Hard copies must be identical to the submitted electronic copy in text and pagination. In the alternative, the electronic copy shall be controlling.

4. Follow-up conferences/interviews may be scheduled as described herein. In the event an interview is scheduled, proposers will be contacted by Ms. Pelletier, and may return calls for the sole purpose of scheduling an interview at (603) 271-6008.

I. BACKGROUND

The Commission is an administrative agency with the State of New Hampshire. The Commission's primary responsibility is as an arbiter between the public utilities and their ratepayers. Proceedings in this regard address such matters as public utility rates, financing, terms and conditions of utility service, quality of service, safety and reliability, eminent domain matters, public utility exemptions from local zoning ordinances, public utility franchises, utility crossings of public lands and waters, wholesale relationships between utilities, rulemakings, and consumer complaints. The Commission also performs other roles and functions as specified in relevant state statutes.

In Order No. 26,029, issued in Docket DE 16-576 on June 23, 2017 (June 2017 Order), the Commission approved the adoption of a new alternative net energy metering tariff, designed to

be in effect for a period of years while additional data is collected and analyzed, pilot programs are implemented, and a value of distributed energy resources study (VDER Study) is conducted. The June 2017 Order is available on the Commission website at www.puc.nh.gov/Regulatory/Docketbk/2016/16-576/ORDERS/16-576_2017-06-23_ORDER_26029.PDF.

The June 2017 Order directed that the VDER Study focus on the net present value of long-term avoided costs using marginal concepts and incorporating test criteria from standard energy efficiency benefit-cost analysis. Notwithstanding the name of the VDER Study, the study will not address all distributed energy resources, but only distributed generation that is eligible for net energy metering. The VDER study will use identified distributed generation technologies as test cases for evaluating the value of resources eligible for net metering.

Staff conducted a series of stakeholder working group sessions to develop a study scope and timeline for the VDER Study.

Following receipt and evaluation of public comments, the Commission issued Order No. 26,316 (December 2019 Order), establishing the scope and timeline for the VDER Study and directing Staff to engage a consultant to perform the VDER Study. The December 2019 Order is available at www.puc.nh.gov/Regulatory/Docketbk/2016/16-576/ORDERS/16-576_2019-12-18_ORDER_26316.PDF. The approved VDER Study Scope and Timeline, is provided as Appendix A to this RFP. The approved VDER Study Scope and Timeline provides the primary basis for the general scope, methodology, and timeline for the services that are the subject of this RFP.

Proposers are expected to be familiar with the contents of the filings noted above and with Appendices A and B.

II. SCOPE OF SERVICES AND DELIVERABLES

The consultant will be hired and supervised by the Commission to perform the VDER Study, and will work at the direction of, and in consultation with, Staff. The consultant will determine a system-wide net value of distributed generation within the three regulated electric distribution utility service territories in New Hampshire. *See* Appendix A.

The consultant will perform the following tasks related to the approved VDER Study:

1. Finalize study methodology and assumptions:
 - a. Detail proposed methods of analysis for each avoided cost criteria category to be studied. For categories where qualitative review is specified or recommended, provide a list of studies, research, and other information that will be reviewed.

- Where proxy values are proposed to be determined, identify proposed methods and sources for proxy value development.
- b. Detail study assumptions, including load growth, distributed generation penetration assumptions, discount rates, etc.
2. Prepare a project plan identifying specific deliverables, milestones, and proposed dates for VDER Study working group sessions.
 3. Present final study plan and timeline to the VDER Study working group.
 4. Conduct meetings with Staff and the VDER Study working group as specified within Appendix A:
 - a. Participate in bi-monthly (every other month) meetings with the VDER Study working group to provide status updates, present completed study analysis and/or results, and answer questions during the study process.
 - b. Participate in other VDER Study working group meetings convened by Staff in connection with any major step in the study process, even if that meeting would be held sooner than would otherwise occur on a bi-monthly schedule.
 5. Conduct relevant investigation and analysis and prepare a final VDER Study report, as described in Appendix A:
 - a. Work with the three regulated electric distribution utilities as necessary.
 - b. Conduct additional research and analysis as required per scope, criteria, and selected methods.
 - c. Prepare, deliver, and present the final study report.
 6. In addition to submitting a proposal and quote covering the services listed above, proposers must provide a separate description and separate quote for the following optional study adders:
 - a. Study Adder #1: Model Development - Assistance with development of a flexible, accessible valuation model that can be used to evaluate a variety of net-energy-metering-eligible distributed generation technologies beyond the scope of the VDER Study, such as distributed generation with smart inverters (although those other capabilities will not be a primary focus of the study at this time).
 - b. Study Adder #2: High Load Growth Sensitivity Analysis, if recommending.
 - c. Study Adder #3: Market Resource Value Sensitivity Analysis, if recommending.

III. PROPOSAL COMPONENTS

The overall proposal emphasis should be on completeness and clarity of content. Proposals that are incomplete or unsigned will not be considered. Proposals shall include the following information, and respond to all areas listed below, in the order listed, concluding with a separate section on cost estimates for the base scope of work, and a separate description of and cost estimate for the Study Adder described in Section II.

1. Letter of Transmittal: Include the name of the proposer and contact information for, and signature of, the individual authorized to bind the proposer, and identify and provide contact information for the proposer's primary point of contact for the proposal. (1 page)
2. Proposer's Corporate/Company Information: Information concerning corporate/company history, i.e., how many years in business, corporate officers or company principals, location of branch offices, professional and business association memberships, current or prior engagements involving substantive areas similar to those described in this RFP, the parties it represented in such engagements, the scope of work it performed in such engagements, and the conclusion and recommendations it made publicly in connection with such engagements. (1 page)
3. Proposed Work Plan: Detailed description of the proposer's plan to conduct and complete the VDER Study, with the scope, methodologies, and timeline as specified in Appendix A. Provide a brief description of the proposed approach for each avoided cost criteria, including where possible a recommendation of quantitative or qualitative review for criteria specified as "qualitative-quantitative proxy estimate" approach. Please describe separately the proposed approach for recommended adders.
4. Relevant Qualifications and Experience of Personnel Assigned: Detailed description of the proposer's relevant experience with respect to the proposed scope of services, including a list of all personnel who will be assigned to this engagement, including the project manager (if applicable), and detailed resumes (in an appendix) and summaries of each individual reflecting his or her relevant experience, the nature of his or her specific responsibilities, and the positions publicly advocated by the proposer in connection with any similar engagements. During the course of the work, any material substitutions or changes in personnel assigned to perform the work must be approved by the Commission in writing. (no more than 3 pages, not including the resumes of key personnel)
5. References: A list of at least three references for work performed by the proposer, which is similar in scope or content to that proposed, preferably within the past three years. (1 page)

6. Statement of Disclosure: Identification and description of any existing or potential conflicts of interest, including those that arise as a result of relationships or affiliations with utility companies under the jurisdiction of the Commission, other industry participants, trade associations, or advocacy organizations or groups that participate in or represent active stakeholders in the commercial and industrial solar or other renewable energy technology equipment manufacturing, sales, or installation industries.
7. Detailed Budget and Cost Proposal: A **detailed** study project budget and cost proposal, including, but not limited to, task-level estimates, the hourly rate for personnel and any associated expenses, also to include:
 - a. A separate detailed budget and cost proposal to perform base scope of work excluding scope Avoided Cost Criteria No. 8 and Avoided Cost Criteria No. 18.
 - b. A separate detailed budget and cost proposal to perform scope Item 8 and Item 18, with each such separate estimate labelled “Avoided Cost Criteria [#] Budget.”
 - c. A separate detailed budget and cost proposal to perform the described Study Adder: Model Development, with that estimate labelled “Study Adder #1 Budget.”
 - d. A separate detailed budget and cost proposal to perform the described Study Adder: High Load Growth Sensitivity Analysis, with that estimate labelled “Study Adder #2 Budget.”
 - e. A separate detailed budget and cost proposal to perform the described Study Adder: Market Resource Value Sensitivity Analysis, with that estimate labelled “Study Adder #3 Budget.”

See Appendix A for detailed description of scope items referenced above.

IV. SELECTION PROCESS AND SCORING CRITERIA

A. Selection Process

Proposals will be reviewed and evaluated in a three-tier review process, followed by a contracting phase. The four steps are summarized below:

Step 1: Staff shall assess completeness and responsiveness of proposals to eliminate non-conforming proposals. Staff may waive or offer a limited opportunity to cure

immaterial deviations from RFP requirements if it is determined to be in the best interests of the State.

Step 2: An Evaluation Team consisting of Staff members shall initially score conforming proposals and conduct interviews, if requested, as described below. The Evaluation Team shall score all proposals using pre-published scoring criteria set forth in this RFP and develop a score for each proposal from 0-100 points.

Step 3: Based on the proposals, the scores developed by the Evaluation Team at Step 2, and following interviews and/or written questions, if applicable, and review of references, the Evaluation Team shall generate final consensus scores for each proposal, rank all proposals, and submit its recommendation to the Commissioners, who will review and approve the selection of the winning proposal.

Step 4: The Commission shall negotiate, if necessary, and develop a contract and related documents, then submit the completed contract(s) to Governor and Executive Council for approval.

Notwithstanding any other provision of this RFP, this RFP does not commit the Commission to make an award of a contract. The Commission reserves the right, at its sole discretion, to reject any or all proposals, or any portions thereof, for any reason, at any time, including, but not limited to, canceling the RFP, and to solicit new proposals under a new acquisition process. If, for any reason, negotiations with the top scorer(s) do not result in a contract(s), despite reasonable efforts made in good faith, the Commission may go to the next highest scorer(s) and seek to negotiate with that proposer(s).

Proposals shall be deemed incomplete and ineligible if information that is essential to the scoring evaluation is not included in the proposal. Proposals that fail to meet the following application requirements will be deemed ineligible:

- Filing of a timely proposal, with the correct number of paper and electronic copies, and all mandatory elements;
- Identification of key personnel, and potential contractors or subcontractors, if applicable, or a detailed process and timeline to identify and engage any such contractors or subcontractors;
- Listing of key project milestones and the associated project schedule and timeline; and
- Inclusion of a detailed budget plan and cost information.

All proposals deemed ineligible shall receive notification of this determination in a timely manner.

Broadly, the Commission will evaluate all proposals received and deemed eligible based upon completeness, clarity, quality of the proposal, how well the proposal meets the approved VDER

Study Scope and Timeline requirements, reasonableness of cost, the qualifications and relevant experience of the Study project team, and the likelihood of the VDER Study completion within the contract period. All proposals deemed eligible for consideration will be evaluated based upon the specific criteria identified.

If determined to be appropriate by the Commission, proposers may be invited to oral interviews. The Commission retains the sole discretion to determine whether to conduct oral interviews, with which proposers, and the number of interviews. Proposers are advised that interviews may be conducted with fewer than all proposers.

The purpose of oral interviews is to clarify and expound upon information provided in the written proposals. Proposers are prohibited from altering the basic substance of their proposal during the oral interviews. Proposers may be asked to provide written clarifications of elements in their proposals, regardless of whether an oral interview will be conducted.

Information gained from oral interviews will be used to refine scores assigned after the Step 2 review of the Proposal.

B. Scoring Criteria

The Commission shall consider all of the following criteria, and assign a corresponding point score, where a maximum score for all criteria shall be 100 points. Cost is a consideration, but may not be the determining factor in the selection of the VDER Study consultant. The Commission reserves the right not to consider any proposal with a total aggregate point score of less than 65 points.

1. Qualifications, technical expertise, certifications, knowledge and practical experience that the consultant possesses, including that of the staff and any subcontractors assigned to the engagement, providing services directly relevant to the specified scope of services, including value of distributed generation or distributed energy resources analysis, utility distribution system marginal costs, avoided energy supply costs analysis, net energy metering of solar and hydroelectric facilities, renewable energy systems development and operation, utility cost tests, and bill and rate impact tests. (Maximum Point Score: 30)
2. Clarity and appropriateness of proposed criteria evaluation approaches, general study approaches, and demonstrated knowledge of relevant subject matter. (Maximum Point Score: 15)
3. General experience and qualifications in providing similar services in New Hampshire as well as other states and to other utility commissions or regulatory agencies, including similar current or prior engagements and the positions publicly advocated in connection with such engagements. (Maximum Point Score: 15)

4. Cost of consulting services and expenses, including the competitiveness of the proposed fees and/or hourly rates and any proposed discounts or other benefits, and the overall quality of the proposed budget estimate. (The Commission reserves the right to negotiate lower fees or a different hourly rate structure than proposed, with any selected consultants.) (Maximum Point Score: 20)
5. Ability to work effectively in New Hampshire, including accessibility and proximity to, and familiarity with, the State. (Maximum Point Score: 10)
6. Overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of proposal, including proposed allocation of resources and time to critical tasks and schedule. (Maximum Point Score: 10)

V. TERM OF CONTRACT

The term of the contract is expected to be for a period of 18 months from the date of Governor and Executive Council approval. The contract term may be extended by an additional term at the sole option of the State, subject to the parties' prior written agreement on terms and applicable fees for each extended term, contingent upon satisfactory vendor performance, continued funding and Governor and Executive Council approval.

VI. GENERAL CONDITIONS

1. The Commission reserves the right to reject any or all proposals, or any part thereof, to determine what constitutes a conforming proposal, to waive irregularities that it considers non-material to the proposal, solely as it deems to be in the best interests of the State, and to negotiate with any party in any manner deemed necessary to best serve the interests of the State. This RFP and all information relating to this RFP (including, but not limited to, fees, contracts, agreements, and prices), are subject to the laws of the State of New Hampshire regarding public information and state procurement of goods and services.
2. If the Commission decides to award a contract as a result of this RFP process, any award is contingent upon approval of the contract by the Governor and Executive Council with payment subject to the Commission's special utility assessment process. Payments hereunder are contingent upon the availability of funds assessed pursuant to RSA 365:37, II. The Commission shall assess the costs of the contract to the appropriate party(ies) and upon payment of the assessment, will process payment to the consultant. (General funds will not be requested to support the contract resulting from this RFP).

3. The Commission reserves the right to request additional information from any or all consultants submitting proposals to assist in the evaluation process.
4. Confidentiality of Proposal and Information Provided to Proposers:
Unless necessary for the approval of a contract by Governor and Executive Council, the substance of a proposal must remain confidential until the effective date of any contract resulting from this RFP. A proposer's disclosure or distribution of proposals other than to the Commission may be grounds for disqualification. Each proposer also agrees to maintain as confidential all information to which it has access in the course of this RFP and contracting process until such time as it is instructed otherwise by the Commission.
5. Public Disclosure:
Pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the award of a contract. At the time of receipt of proposals, the Commission will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services pursuant to this RFP, the Commission will post the name of each proposer, and rank or score of each proposal eligible to be scored. In the event that the contract does not require Governor and Executive Council approval, the Commission shall disclose the name of each proposer and rank or score of each proposal eligible to be scored at least five (5) business days before final approval of the contract. All such postings may be viewed on the Commission's website at: www.puc.nh.gov/Home/requestforproposal.htm.

By submitting a proposal, the proposer acknowledges that the Commission is subject to the Right-to-Know Law, RSA Chapter 91-A. The content of each proposer's proposal shall become public information upon the award of any resulting contract. Any information submitted as part of a response to this RFP may be subject to public disclosure unless otherwise exempt. *See* RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP may be made accessible to the public online through the website Transparent NH:

(<http://www.nh.gov/transparentnh/>). However, business financial information, confidential information, such as personally identifiable information, including, but not limited to, social security numbers, taxpayer identification numbers, employer identification numbers, and account numbers, proprietary information such as trade secrets, financial models and forecasts, and proprietary formulas, may be exempt from public disclosure under RSA 91-A:5, IV.

If any part of its proposal contains information that a proposer asserts is exempt from public disclosure, **the proposer must specifically identify all relevant text in a letter to**

the Commission, and must mark or stamp each page of the materials claimed to be exempt from disclosure as “confidential,” and provide support for such assertion(s) as part of proposer’s response to this RFP. The proposer shall explain, in writing, what measures it has taken to keep such information confidential, and the personal privacy or competitive business interests that would be harmed if such information were to be publically disclosed. The explanation shall also identify by page number and proposal section number the specific information the proposer claims to be exempt from public disclosure pursuant to RSA 91-A:5. It is helpful if the text claimed to be confidential is also highlighted, underlined, or otherwise identified in the actual proposal itself. Marking the entire proposal or entire sections of the proposal (e.g., costs) as “confidential” will neither be accepted nor honored.

The Commission shall maintain the confidentiality of information contained in proposals, insofar as doing so is consistent with RSA Chapter 91-A. Any information a proposer identifies as exempt from disclosure shall be kept confidential until the Commission has determined, as necessary, whether such information is exempt from public disclosure pursuant to RSA 91-A.

In the event that the Commission receives a request to view portions of a proposal that the proposer has properly and clearly marked “confidential,” the Commission shall notify the proposer and specify the date the Commission intends to release the requested information, redacting any information the Commission independently concludes is exempt, consistent with applicable laws and regulations. Any effort to prohibit or enjoin the release of the information the Commission identifies for release shall be the proposer’s responsibility at the proposer’s sole expense. If the proposer fails to obtain a court order enjoining the disclosure, the Commission may release the information on the date the Commission specified in its notice to the proposer(s), or in its notice to any other relevant parties, without any liability to the proposer(s).

6. By submitting a proposal, a proposer agrees that in no event shall the Commission be either responsible for or held liable for any costs incurred by the proposer in preparation of or in connection with the proposal, or for work performed prior to the effective date of any resulting contract.
7. All parties submitting proposals shall be Equal Opportunity Employers. The selected consultant will be expected to comply with all federal, state, and local laws respecting non-discrimination in employment.
8. The Commission reserves the right to amend or cancel this RFP at any time. Proposers should check <https://www.puc.nh.gov/Home/requestforproposal.htm> for any addenda to

this RFP before submitting their proposals, and for answers to any questions other parties may have submitted.

9. The selected consultant shall be required to submit a Taxpayer Identification Number (TIN), Employer Identification Number (EIN), or Social Security Number (SSN), and to register as a vendor with the State of New Hampshire.
10. The terms and conditions set forth in the State's Form P-37 (version 12/11/2019) "Agreement, General Provisions" (General Provisions) for contracts, attached hereto as Appendix B, shall apply to the contract to be entered into with the winning proposer(s). In addition, each contract shall be supplemented by three exhibits: Exhibit A will include any special provisions, including any modifications to the General Provisions regarding insurance coverage and other matters; Exhibit B will set forth in detail the Scope of Services and reporting requirements; and Exhibit C will set forth in detail the price limitation, the source of payment (special utility assessment), and any preconditions to payment.
11. Once a contract becomes effective, any subsequent material changes or modifications to the contract terms must be submitted for review and prior approval by the Governor and Executive Council.
12. This RFP is not an offer. Neither the Commission nor this RFP shall create any commitment on the part of the State or confer any rights on the part of the proposer unless and until a binding written contract is executed between the Commission and the proposer, and approved by the Governor and Executive Council.
13. Property of the State: All materials and data submitted or received in response to this RFP will become the property of the State and will not be returned to the proposer(s). Upon contract award, the State reserves the right to use any information presented in any proposal, provided that its use does not violate any copyrights, or other provisions of law, including RSA 91-A.
14. Non-Collusion: The proposer's signature on a proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and work quoted have been established without collusion with other proposers and without effort to preclude the Commission from obtaining the best possible competitive proposal. Proposers who wish to submit joint proposals with other consultants must clearly identify that the proposal is a "joint proposal" and must identify all proposers in the first instance.

15. Challenges on Form or Process of the RFP

Any challenge regarding the validity or legality of the form and procedures of this RFP, including, but not limited to, the evaluation and scoring of proposals, shall be brought to the attention of the Commission at least ten (10) business days prior to the proposal submission deadline, by sending written notice to the RFP Point of Contact, Ms. Juli Pelletier, the Commission's Business Office Director. By submitting a proposal, the proposer is deemed to have waived any challenges to the Commission's authority to conduct this procurement and the form and procedures of this RFP.

VII. GENERAL PROVISIONS, FORM P-37 (version 12/11/2019), AND CERTIFICATES

The successful proposer(s) will be expected to enter into a contract with the State of New Hampshire. The terms and conditions set forth in Form P-37 (version 12/11/2019) General Provisions (available at: <http://www.puc.nh.gov/Home/requestforproposal.htm>) are mandatory and will apply to any contract awarded to the proposer. In addition, project specific terms and conditions will be negotiated with the proposer and included in the final contract. For the convenience of the proposers, Form P-37 (version 12/11/2019) has been included in Appendix B.

When responding to this RFP, each proposer must explicitly indicate that the proposer shall comply with the requirements of Form P-37 (version 12/11/19). To the extent a proposer believes that an exception to the standard form will be necessary for the proposer to enter into a contract, the proposer should raise that issue during the proposer inquiry period. Staff will review the inquiry regarding the requested exception(s) and respond that the exception is accepted, rejected, or note that the Commission is open to negotiation regarding the requested exception(s) at the Commission's sole discretion. If a proposer's exception is accepted, or is open to negotiation, the Commission will, by means of posting the answer to the proposer's inquiry, and prior to the conclusion of the inquiry response period, provide notice to all potential proposers of the exception(s) which has been accepted, or is open to negotiation, and indicate that exception is available to all potential proposers. Any exceptions to the standard form contract that are not raised during the proposer inquiry period are waived. In no event is a proposer to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this RFP. The proposer inquiry period begins when the RFP is posted, and ends at the conclusion of the RFP's written inquiry period. All inquiries must be in writing, and must be sent to the RFP point of contact identified above.

With regard to Form P-37 (12/11/2019) General Provisions, Paragraph 14, "Insurance," please note that proposers may be allowed to substitute professional liability insurance for part or all of the per occurrence comprehensive general liability insurance coverage. In addition, excess liability insurance in an equal amount may be substituted for up to \$1,000,000 of the per occurrence comprehensive general liability or professional liability insurance coverage. The

State reserves the right to consider further waiving or modifying the insurance requirements in Paragraph 14 based on proposals submitted, consistent with the procedure described above.

A proposer will be required to fill in the P-37 Form (version 12/11/2019) ONLY upon the Commission's selection of the winning proposal(s), and prior to submission of the final contract(s) for review and approval by the Governor and Executive Council.

The successful proposer(s) will be required to provide the following certificates prior to entering into a contract with the Commission:

Secretary of State's Office Certificate of Good Standing ("CGS")	Business organizations and businesses using trade names need a CGS, except for nonresident nonprofit corporations. Individuals contracting in their own names do not need a CGS.
Certificate of Vote /Authority ("CVA")	Business entities and businesses using trade names need a CVA. Individuals contracting in their own name do not need a CVA.
Certificate of Insurance	Certificate of Insurance form attached with insurance coverages required under the contract. Modifications of insurance coverage required will be specified in the contract.
Workers' Compensation	Contractor must demonstrate compliance with or exemption from RSA 281-A (and if applicable, RSA 228:4-b and RSA 21-I:80, and any other applicable laws or rules).

The successful proposer(s) will be required to provide the above certificates ONLY upon the Commission's selection of the **winning proposal(s), and prior to submission of the final contract(s) for review and approval by the Governor and Executive Council.**

VIII. ETHICAL REQUIREMENTS

From the time this RFP is published until a contract is awarded, no proposer shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined in RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any proposer that violates RSA 21-G: 38 shall be subject to prosecution for an offense under RSA 640:2. Any proposer who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending

criminal charge for such an offense, shall be disqualified from bidding on this RFP, or similar request for submission and every such proposer shall be disqualified from bidding on any RFP or similar request for submission issued by any State agency. A proposer that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the Department of Administrative Services, which shall note that information on the list maintained on the State's internal intranet system, except in the case of annulment the information shall be deleted from the list.

APPENDIX A

VALUE OF DISTRIBUTED ENERGY RESOURCES STUDY
SCOPE AND TIMELINE

This document describes the study parameters, concepts and criteria for the New Hampshire-specific Value of Distributed Energy Resources (VDER) study as approved with clarifications and modifications specified in Commission Order No. 26,316, issued December 18, 2019 in Docket DE 16-576.

I. Study Objectives

Pursuant to Commission Order No. 26,029 and Order No. 26,316, issued in Docket DE 16-576, Development of New Alternative Net Metering Tariff and/or Other Regulatory Mechanisms and Tariffs for Customer-Generators, the New Hampshire VDER study will focus on the net present value of long-term avoided costs using marginal concepts and incorporating test criteria from standard energy efficiency (EE) benefit-cost analysis (BCA). Commission Order No. 26,029 clarified that, notwithstanding the name of the VDER study, the study will not address all distributed energy resources but only distributed generation (DG) that is eligible for net metering. The VDER study will use identified DG technologies as test cases for evaluating the value of resources eligible for net metering.

The VDER study analysis will provide detailed information regarding costs avoided by net-metered DG under general conditions, as well as at specific times and at particular locations, and will evaluate respective benefits and costs from the perspective of the electric distribution utilities, customer-generators participating in net energy metering (NEM), and non-participating electric ratepayers. In conjunction with the results of related studies and any relevant pilot programs, the VDER study will provide data and analysis to inform future rate design and tariff development for customer-generators with DG eligible to participate in NEM. The study results are not intended to pre-determine future NEM tariff design or applicable rates, but rather to inform further NEM tariff development proceedings before the Commission.

II. Study Overview

Because the VDER study will be performed within the context of the NEM proceeding, study analysis will focus on DG that is eligible for NEM and is interconnected to a New Hampshire regulated distribution utility (i.e., Eversource, Unitil, and Liberty Utilities). The study will focus on impacts within New Hampshire, with consideration of regional energy market effects where appropriate. The study will assess the relative benefits and costs of net-metered DG from the perspectives of the utility system as a whole, participating NEM customer-generators, and other electric utility ratepayers. To assess these costs and benefits, the study will use a combination of the utility cost test, and consumer rate and bill impact analysis, to determine the effects on utility ratepayers and the potential for cost-shifting between customers participating and those not participating in net metering.

The VDER study will focus on load reduction values, as that is the primary way in which DG will achieve utility cost avoidance, particularly given the current size limit on customer-generators eligible to participate in net metering.

Customer installed net costs will be used to evaluate how NEM crediting and compensation may affect reasonable opportunities to invest in DG and receive fair compensation, as contemplated by House Bill 1116 (2016). The VDER study will also include sensitivity analyses to determine the demonstrable and quantifiable net benefits associated with relevant externalities, such as environmental benefits, while adequately mitigating the potential for double-counting of such externalities, as contemplated by Order No. 26,029.

The VDER study will maintain consistency with EE cost-effectiveness evaluation, including the use of standard EE BCA criteria and the incorporation, where appropriate, of modeling tools, methods, criteria, and data from the most recent Avoided Energy Supply Cost in New England study (AESC)¹. The VDER study will calculate avoided costs over a 15-year time horizon, with 3-5 years of historic data reviewed, where possible, to verify and validate any forward projections. Net avoided costs will be presented on a net present value basis using appropriate discount rates to be developed by the study consultant with stakeholder input.

Certain avoided costs contributing to the VDER are time and/or location dependent. The study will determine hourly avoided cost values, where applicable, thereby enabling a technology-neutral analysis of marginal avoided cost components. By mapping those hourly values to DG production curves, relatively more precise value estimates can be determined for various DG technologies, including in particular solar photovoltaic (PV) and hydroelectric facilities, as contemplated by Order No. 26,029.

Using data and analysis derived through the Locational Value of Distributed Generation (LVDG) study, approved in Commission Order No. 26,221 (February 10, 2019), and clarified in Commission Order No. 26,227 (March 20, 2019), the VDER study will also consider DG avoided cost values based on specific locations on the utility distribution systems.

The VDER study will use a value stack approach to evaluate the net costs and benefits of the criteria outlined in Table 2, which were developed through a stakeholder process and approved by the Commission. The scope includes a number of “hard-to-quantify” criteria proposed to be evaluated through either quantitative proxy values or qualitative review. Qualitative review or quantitative proxy values represent a reasonable approach to cost-effectively address hard-to-quantify criteria without ignoring particular avoided cost categories.

The goal of the VDER study is to provide useful analysis to better understand the nature and amount of avoided costs, other net benefits, and costs associated with net-metered DG. Optionally, the consultant may provide a flexible and accessible model to evaluate a number of additional technology capabilities, such as DG with smart inverters, although those other capabilities will not be a primary focus of the study at this time.

¹Avoided Energy Supply Cost in New England study report (AESC), (2018) is available at: <https://www.synapse-energy.com/project/aesc-2018-materials>

III. Study Parameters, Avoided Cost Criteria and Methods




Tables 1 and 2 present a summary of the key VDER study parameters, avoided cost criteria, and study methodology, as approved by the Commission. It is anticipated that the study scope criteria and methodology will be further refined and specified once the independent consultant has been engaged by the Commission to perform the VDER study and with the active assistance of that independent consultant.

Table 1. Study General Parameters

No.	Item	Description
1	Time Scale	15 year forward-looking study, with 3 to 5 years of historic data reviewed, where possible, to verify and validate forward projections
2	Methodology	<p>Develop avoided costs and analyze using the Utility Cost Test (UCT), and rate and bill impact analysis. Maintain consistency with EE cost-effectiveness evaluation, including use of standard EE BCA criteria and consideration of modeling tools, methods, criteria, and data from the AESC, where appropriate. AESC data and methods will be reviewed and adapted to the extent necessary and possible for use as criteria data in the VDER study.</p> <p>Determine avoided costs for DG attributable to associated load reduction values (LRV). Calculate hourly load reduction values, including, to the extent possible, a model capable of mapping value to resource-specific production curves. Models should also provide flexibility in criteria values and other data inputs.</p> <p>Market resource value (MRV) – separate analysis to calculate monetizable values of aggregated DG resources participating directly in relevant wholesale power markets. Staff to work with consultant to determine whether an MRV analysis may be appropriate for larger DG as a study sensitivity.</p>
3	Technology	<p>The above methodological approach should require, to the extent possible, flexible Excel-based modeling tools which allow for investigation of value propositions by technology through different production or load reduction curve mapping; however, the main study focus should be on solar photovoltaic (PV) and hydroelectric generation.</p> <p>Models should analyze values associated with load reduction and, in the MRV alternative (if considered), with market participation as passive resources only. Tools should be able to model different generation configurations and relevant variables for both value types (e.g., for PV, consider azimuth 180 (south), 270 (west), dual access tracker, AC-DC ratio). Solar PV with storage should be considered as a sensitivity analysis. Such analysis should assume optimal power injection to meet capacity commitment requirements for passive resource participation in the ISO-NE market.</p>

Table 2. Avoided Cost Criteria and Methods

Table 2 summarizes each avoided cost item to be evaluated in performing the VDER study and the methodology for analyzing that avoided cost item. The table provides a brief description of the avoided cost item, the data to be analyzed, and the methodology through which that data will be evaluated.

-  Represents criteria to be evaluated using quantitative proxy values or qualitative review.
-  Represents criteria to be evaluated using AESC data, methods, and results, as applicable.
-  Represents criteria to be evaluated using quantitative methods unrelated to the AESC.

No.	Avoided Cost	Description of Avoided Cost	Data and Methodology
1	Energy	ISO-NE Locational Marginal Prices (LMP's), including congestion and losses (assuming embedded fuel cost, variable generation O&M, and environmental compliance costs (RGGI, NO _x , SO ₂))	Use forward projections of ISO-NE LMPs to calculate avoided costs associated with relevant load reductions using approach consistent with EE methodology.
2	Capacity Market Costs	ISO-NE Forward Capacity Market (FCM) clearing prices	Use forward projections of FCM clearing prices to determine avoided costs associated with relevant peak load reductions using approach consistent with EE methodology (e.g., AESC). Under optional MRV sensitivity, analyze ISO-NE capacity market revenue estimates for cleared resources and projected DG market participation to determine MRV value projections.
3	Ancillary Services and Load Obligation Charges	Reserves, regulation, inadvertent energy, Net Commitment Period Compensation (NCPC), Auction Revenue Rights (ARR) revenues, ISO-NE schedule expenses, NEPOOL expenses, etc. (as charged to wholesale load obligations)	Use forward projections of cost-based service prices and of market prices for services met through market mechanisms to calculate avoided costs associated with relevant load reductions, including related administrative charges assessed by ISO-NE or the relevant utility using approach consistent with EE methodology (e.g., AESC). Forward projections should use New Hampshire-specific DG penetration level projections.
4	RPS Compliance	New Hampshire Renewable Portfolio Standard (RPS) compliance costs avoided due to customer load and retail sales reductions	Use forward projections of RPS compliance costs (RPS requirements and ACP rates) for New Hampshire to determine avoided costs associated with relevant retail energy sales reductions, using approach consistent with EE methodology (e.g., AESC).

No.	Avoided Cost	Description of Avoided Cost	Data and Methodology
5	Transmission Charges	ISO-NE Regional Network Service (RNS) and Local Network Service (LNS) charges avoided (through reallocation), due to reductions in metered wholesale energy load obligations	Use forward projections of RNS and LNS charges assessed by ISO-NE to determine avoided costs associated with relevant utility monthly coincident peak reductions, including related administrative charges assessed by ISO-NE or the relevant utility. May need to consider projections of proportional transmission use for other New England states.
6	Transmission Capacity	Avoidance or deferral of transmission capacity additions or upgrades due to load reductions resulting from New Hampshire DG deployment	Analysis of potential future avoidance or deferral of transmission system capital costs, without double-counting of any avoided costs covered by future RNS and LNS projections. Recommended qualitative-quantitative proxy estimate approach, potentially incorporating analysis consistent with EE methodology (e.g., AESC).
7	Distribution Capacity	Avoidance or deferral of New Hampshire utility distribution system capacity additions or upgrades due to DG deployment and/or DG customer upgrade cost payments	Study and analysis of potential future avoidance or deferral of distribution system capital costs, informed by the separate LVDG study. To the extent the LVDG study does not determine system-wide value for lower-order distribution investment deferrals, Staff to work with consultant to determine such values.
8	Distribution System Op. Expenses	Reduction or deferral of distribution system operating expenses, through equipment life extension, lower maintenance and labor costs, etc.	Study and analysis of potential future reduction or deferral of distribution system operating expenses. Recommended qualitative-quantitative proxy estimate approach, if it can be conducted at a reasonable cost by the independent consultant.
9	Trans. Line Losses	High voltage (PTF) and local transmission system line loss reductions due to New Hampshire DG deployment	Study and analysis of avoided transmission system line losses, without double-counting any losses included in relevant ISO-NE LMPs for avoided energy analysis. Make use of existing studies to the extent relevant.
10	Distrib. Line Losses	New Hampshire utility distribution system line losses avoided due to New Hampshire DG deployment	Study and analysis of avoided distribution system line losses, possibly including New Hampshire utility recalculation of average system line losses. Make use of existing studies to the extent relevant.
11	Wholesale Market Price Suppression	Electric and natural gas wholesale market demand reduction induced price effects (DRIPE)	Forward projections of various DRIPE impacts, using approach consistent with EE methodology (e.g., AESC). In the MRV alternative, capacity DRIPE only would be based on EE study methodology based on FCM price projections.

No.	Avoided Cost	Description of Avoided Cost	Data and Methodology
12	Hedging/Wholesale Risk Premium	Avoidance of risk premium applicable to retail sales relative to wholesale market price exposure, as included in default service bids	<p>Hedging and other premiums represent risk-associated costs and profit margins of wholesale energy marketers that are included in default service contract bids to retail electric utilities.</p> <p>Recommended qualitative-quantitative proxy estimate approach to determine whether effects of DG penetration may tend to increase or reduce costs.</p>
13	Distribution Utility Admin	Administrative costs avoided or incurred by New Hampshire distribution utilities due to DG deployment and NEM (e.g., metering and billing, credit and collections, program administration, distribution system analyses, etc.)	<p>Analysis of utility marginal administrative costs attributable to DG deployment, which may be either a positive or negative benefit on a net basis for different cost categories.</p> <p>Recommended to be assessed a qualitative review and/or quantitative proxy estimate approach using New Hampshire utility expense information, to be further developed by independent consultant within applicable study budget constraints.</p>
14	Transmission & Distribution System Upgrades Required	Actual or potential increases in transmission and/or distribution system capital or operating costs due to New Hampshire DG deployment (may be a cost not avoided)	<p>Study and analysis of utility transmission and/or distribution system cost increases attributable to DG installation and operation, to the extent not covered by directly-assigned costs paid by DG owners. To the extent distribution system upgrades funded by interconnecting customer-generators can be demonstrated to benefit other utility ratepayers, those avoided costs may be included in the study.</p> <p>Recommended to be assessed through a qualitative review or a qualitative-quantitative proxy estimate approach, to be further developed by independent consultant within applicable study budget constraints.</p>
15	Utility Lost Revenues	New Hampshire distribution utility shortfalls in revenue requirement collection, due to DG net metering (potentially offset by reduced customer account arrearages)	<p>Study and analysis of distribution utility net lost revenues, collected from other customers through rate adjustments, to determine potential cost-shifting effects through rate and bill impact tests.</p> <p>Not to include separate analysis of how increased electric usage caused by DG adoption may impact lost revenues; however, macro-level “high load growth” general study sensitivity, including consideration of effects regarding this criterion, may be conducted subject to further development by the independent consultant within study budget constraints.</p>

No.	Avoided Cost	Description of Avoided Cost	Data and Methodology
16	Environmental Externality Benefits	Study to include consideration of “demonstrable and quantifiable net benefits associated with relevant externalities (such as environmental or public health benefits), provided that the potential for double-counting of such externalities is adequately mitigated.” Order No. 26,029 at 60.	Avoided environmental externalities not already included in energy prices to be analyzed as a study sensitivity. Study methodologies to depend on relevant externality benefits as developed by consultant with input from stakeholder working group. Items to review for sensitivity may include RGGI market price projections to determine embedded CO ₂ costs, AESC non-embedded environmental costs and methodologies, AVOIDed Emissions and geneRation Tool (AVERT) model to determine any non-embedded NO _x , SO ₂ , and particulate matter impacts, U.S. EPA social cost of carbon, and review of non-embedded methane emissions impacts. Adequate measures to be taken to ensure that avoided costs are not double-counted.
17	Distribution Grid Support Services (other side of 14)	Frequency regulation and voltage regulation, i.e., volt/VAR optimization, and related power factor correction and conservation voltage management (efficiency gains from average voltage reduction) [related to Item 8]	Analysis through a qualitative review or a qualitative-quantitative proxy estimate approach, to be further developed by independent consultant within applicable study budget constraints. Research may include review of Electric Power Research Institute (EPRI), U.S. Department of Energy National Laboratories, and other analyses of DER capabilities to provide power quality and grid support services, such as ancillary services at the distribution level, particularly with the use of smart inverters, as well as utility system and City of Lebanon real-time pricing pilot meter data on power quality (frequency, voltage, power factor, reactive power - both kVA demand and kVAR consumption), and the possible piloting of smart inverters.
18	Resilience Services	Capability to support operation of micro-grids and emergency generation	Dependent on potential costs and study budget constraints, a literature review and qualitative analysis of potential resilience services, possibly including information available through New Hampshire projects such as the City of Lebanon real-time pricing pilot, Liberty battery storage pilot, etc., to be conducted through the study.
19	Customer Installed Net Costs	Customer Installed Costs Determined on a Net Basis	Study to include a review and analysis of the customer installed costs of various types of solar PV projects, such as residential (8 kW), small commercial (50 kW), and large group host (1,000 kW). Customer system installed costs to be determined net of all available incentives and subsidies, including state incentive programs and federal incentives and tax credits. Independent consultant to assist in identifying appropriate tests and methods for performing this study component.

IV. Additional Study Information

Use of Energy Efficiency Study Methodology

The VDER study test criteria and methodology are designed to make maximum use of EE study methodology and results where appropriate. For example, EE study methodology and results provide avoided cost values for energy and capacity for New Hampshire. The VDER study scope will use the research methodology relied upon in evaluating these costs and benefits of EE programs in New Hampshire. In particular, the AESC analyzes many relevant avoided costs on both a regional and state-specific basis, and the VDER study will rely on the methodology and results of that study whenever it is appropriate to do so. The VDER study will consider and implement adjustments necessary to AESC data and methods to provide results appropriate for valuation of DG net avoided costs (e.g., inclusion of projected EE measures and exclusion of projected New Hampshire DG installations). The use of the AESC furthers the twin goals of consistent analysis in analogous contexts and the effective and efficient use of resources.

Qualitative Analysis

Qualitative review consists of literature review and synthesis of research relating to a criterion without assigning a quantitative value. Qualitative review indicates there is a value or cost which cannot currently be quantified to a level of precision and confidence considered necessary for monetary valuation, but that is potentially significant and should be considered in application of the research. It will act as a placeholder until further research is available.

The VDER study will include qualitative analysis of certain avoided cost items, as, and to the extent, specified in the tables above.

Proxy Values and Secondary Research Estimates

In some cases there may be a body of research performed to a high standard of rigor that is reflective of similar parameters and circumstances relevant to the VDER study criteria which can be used as an approximation, or “proxy value,” with a reasonable level of confidence regarding its precision and accuracy, with respect to New Hampshire-specific values or can be adapted to be New Hampshire-specific. Similarly, national, regional, or state-specific studies relating to specific criteria may be available for review and appropriate for qualitative or quantitative inclusion in place of primary research. Where multiple studies exist, literature review and analysis may be used to calculate an estimated value reflective of the research available in the field, without the need for original data collection or analysis. Proxy values or estimates based on secondary research may include a discount factor to account for uncertainty.

Discount Rates

Where necessary, the VDER study will utilize an appropriate discount rate, or rates, which will be determined with the independent consultant engaged by the Commission.

V. Stakeholder Participation and Study Timeline

The engaged consultant and Commission Staff will hold periodic stakeholder working group meetings, not less frequently than bi-monthly (every other month), to provide status updates and answer questions during the VDER study process. In addition, Staff will convene a stakeholder working group meeting in connection with the completion of any major step in the study process, even if that meeting would be held sooner than would otherwise occur under the bi-monthly meeting schedule. Staff will also provide the stakeholder working group with material documentation, such as reports and analyses completed in the study process, on an interim basis during the study period.

The VDER study is anticipated to begin as soon as the consultant contract has been approved, which is anticipated to occur during the second calendar quarter of 2020. Study report and findings are expected to be completed and delivered to the Commission by the end of the second calendar quarter of 2021.

Quarter 1, 2020	Quarter 2, 2020	Quarter 3, 2020 through Quarter 2, 2021	Quarter 2, 2021
RFP issued for independent consultant.	Select and contract with Consultant.	Consultant conduct study and prepare report and findings.	Study report and findings delivered to Commission.

APPENDIX B

STATE OF NEW HAMPSHIRE FORM P-37 (version 12/11/2019) AGREEMENT, GENERAL PROVISIONS

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature <div style="text-align: right;">Date:</div>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature <div style="text-align: right;">Date:</div>		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i> <div style="display: flex; justify-content: space-between;"> By: _____ Director, On: _____ </div>			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i> <div style="display: flex; justify-content: space-between;"> By: _____ On: _____ </div>			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i> <div style="display: flex; justify-content: space-between;"> G&C Item number: _____ G&C Meeting Date: _____ </div>			

Contractor Initials _____
Date _____

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the

Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State’s representative. In the event of any

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dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice

of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

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Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance: 14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

Contractor Initials _____

Date _____